

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

BEACH WATER INN, INC.

PLAINTIFF

V.

CIVIL ACTION NO. 1:06cv410-LTS-RHW

UNDERWRITERS AT LLOYD'S, LONDON

DEFENDANT

ORDER

This cause of action is before the Court on Defendant's [7], [8] Motion for Summary Judgment, and Plaintiff's [12] Cross-Motion for Summary Judgment. The Court agrees with Defendant's description of this matter as confusing, and the Court observes that the state of the record is far from ideal. Very little evidence is submitted for the Court's consideration; there are no supporting affidavits, opposing affidavits, depositions, answers to interrogatories, or admissions on file as contemplated by Fed. R. Civ. P. 56. The docket sheet shows that discovery is ongoing, and that Plaintiff recently filed an Amended Complaint. It is unknown "what material facts exist without substantial controversy and what material facts are actually and in good faith controverted." Fed. R. Civ. P. 56(d). The parties have presented instead a great deal of argument on several potential issues, but even then there is no discussion in the motions of the possible relevance of the "collapse" (outside the realm of additional coverage for it) or "weather conditions" provisions contained in the "Causes of Loss-Special Form" of the subject insurance policy. The Court hesitates to engage in speculation, especially when both parties argue that there are no genuine issues of material fact and that they are entitled to judgment as a matter of law. The Court is simply not in a position to identify, much less determine, the facts (including all claims for damages) against which the policy of insurance is to be interpreted and applied. A realistic and complete assessment of all issues is not possible at this stage; summary judgment for either Plaintiff or Defendant is inappropriate.

Accordingly, **IT IS ORDERED:**

Defendant's [7], [8] Motion for Summary Judgment is **DENIED**;

Plaintiff's [12] Cross-Motion for Summary Judgment is **DENIED**;

Defendant's [15] Motion for Oral Argument with respect to the opposing motions for summary judgment is **DENIED**.

SO ORDERED this the 13th day of October, 2006.

s/ L. T. Senter, Jr.

L. T. Senter, Jr.

Senior Judge